NECESSITY FOR SUMMARY ACTION IN LEGAL PROCEEDINGS

By Judge R. B. Middlebrook, L. '78.

There is a well founded demand throughout the United States for a more summary disposal of court business. The value of time is recognized, and its waste is minimized in all other departments of human exertion. The Judiciary, the members of the Bar, and the people at large, agree that in the administration of the Civil law, the enforcement of the Criminal Code, and in the general conduct of courts, too much time is wasted. The press throughout the country is beginning to voice the general discontent, justly arising from this condition. While all agree upon the existence of the evil, yet it still continues, principally because of a lack of a specific remedy. Appeals, continuances, changes of venue, dilatory pleas and specified reasons known as "Terms of Court" are some of the main causes of delays. But lack of power, and lack of independence and courage in the Nisi Prius Judiciary is at the bottom of the trouble.

In many of our States, trials in our Nisi Prius Courts are merely the initial stages of litigation—so regarded by both plaintiff and defendant. Both sides are playing for points, and saving exceptions, intending to exploit them before the Appellate Court on appeal. Neither side has any intention, in case of defeat, if abiding by the judgment of the trial court. The dockets of the Appellate courts become crowded, and it is no uncommon thing for a State Supreme Appellate Court to be from one to two or more years behind its docket.

It is suggested that one remedy for this particular delay springing from appeals, as well as tending to mitigate the other delays, would be to equip by proper legislation, or in cases where necessary by Constitutional enactment, the Nisi Prius judges in such a manner that the confidence of litigants in their judgment would be such as to obviate any desire to appeal. Let the judge of lowest rank and smallest jurisdiction be equally equipped with the judge of the very highest jurisdiction, in tenure of office, legal attainments, courage, and honesty. In order to attain these qualifications, the judges should be appointed to serve during good behavior—appointed by the Governor, confirmed by the State

Senate; or elected by the Legislature on joint ballot. In either event they should be endorsed by the Bar Association of their jurisdiction, and in the case of Judges of the State Supreme Court, by the State Bar Association. And their compensation should be adequate and bear some reasonable approach to the earnings of the leaders of the Bar practicing where the Court sits.

Inasmuch as the evils under discussion have grown up under a Judiciary selected by direct vote of the people in most of our States, it may be said in passing, that selecting judges in that particular manner is not shown by actual experience to be a panacea for existing abuses. It is apparent that the scope of this article is confined to our State Courts. No fair observer will contend that at this time we are suffering from a tyrannical, domineering or cruel Judiciary. On the contrary, the powers of our State Nisi Prius Courts have been gradually clipped away until our ordinary Circuit or District Judge has become hardly more than a monitor or moderator, to keep some semblance of order during a trial. This is especially true in our Western States—and Middle Western States—in many of which the trial Judge gives no oral instructions to the jury, and is obliged to refrain from commenting upon the testimony, and must give his written instructions to the jury upon the law alone, not weighing the evidence, and must do so before the final argument of counsel to the jury, the Court's written instructions being read to the jury by counsel, and not by the Court. A restoration of the ancient Common Law powers of the Judiciary should be given Nisi Prius Judges.

It goes without saying that our confidence in the administration of justice must be bestowed eventually on the Judges. They *must* decide. Why not bestow this confidence in the trial Courts, after equipping them so that they deserve it? Provisions for appeals in certain exceptional cases, where genuine doubt exists as to some point of law affecting the *merits* of the case, should be allowed, provided the trial judge is willing to make a certificate of reasonable doubt as to the law being unsettled on the point raised.

Courage and independence on the part of our State Nisi Prius Judiciary would in many instances promote promptness. Lack of resolution, lack of courage, inevitably follow dependence—as well on the bench as in finance and business.

The disposal of continuances, and dilatory pleas, are matters very largely dependent upon the discretion of the trial judges.

If these judges were more independent, these abuses would probably largely disappear—for here it is that a judge, under the present system, is tempted to curry favor by undue toleration—especially just before elections, when his party leaders are attorneys for litigants seeking delay.

Under the system herein suggested, "Changes of Venue" could be, and ought to be, entirely abolished, except in Criminal Cases, where an alleged prejudice is shown against the accused by the inhabitants of the county. At present the Change of Venue statutes in many of our States, are the most sinister as well as the most frequent cause of unnecessary delays and continuances.

Set terms of court for Nisi Prius courts, in thickly settled regions, have seemingly outgrown their usefulness. Especially is this true in large cities. Much useless delay could be avoided by having Court always open, and making return days somewhat as at present existing in Justice of the Peace Courts, instead of compelling litigants to wait for weeks or months for the next "term" of Court to open.

Finally, the Bar should unite to prevent the abuse of existing rules originally designed to facilitate justice—but now too often prostituted for the purpose of getting unfair advantage. It seems apparent that unless Bench and Bar unite in speedy action to remedy existing conditions, the laity—with patience exhausted—will probably, in its wrath, go to some ill-considered extreme in ridding itself of this evil; such being the lesson of history in governmental affairs.

The summary transaction of legal business is dependent almost entirely (except in the matter of Terms of Court and Changes of Venue above noted) upon the exercise of disciplinary power by the trial judges. As long as these judges continue to be dependent for their positons, as at present, upon popular nominations and elections for comparatively short terms, they will (in a majority of cases) be tempted to let things drift along the lines of least resistance, rather than exercise discipline, and incur enmity. If equipped with power, and charged with responsibility, and made independent—or comparatively so—they would display the alacrity in the transaction of legal business which the people demand, and which is exercised in business and commercial transactions. But stripped of real power—yet ostensibly possessing it—they cannot be seriously blamed for the existing conditions.

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